

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARK A. FAVORS, et al.,

Plaintiffs,

11CV 5632 (DLI) (RLM)

DONNA KAY DRAYTON, EDWIN ELLIS,
ÁIDA FORREST, GENE A. JOHNSON, JOY WOOLLEY,
SHEILA WRIGHT, LINDA LEE, SHING CHOR CHUNG,
JUNG HO HONG, JULIA YANG, JAUN RAMOS,
NICK CHAVARRIA, GRACIELA HEYMANN,
SANDRA MARTINEZ, EDWIN ROLDA and
NANOLIN TIRADO

Intervenor-Plaintiffs,

v.

ANDREW M. CUOMO, as Governor of the
State of New York, et al.,

Defendants.

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**LEE INTERVENORS' SUBMISSION TO MAGISTRATE JUDGE ROANN MANN
WITH RESPECT TO CONGRESSIONAL REDISTRICTING PURSUANT
TO ORDER DATED FEB. 28, 2012**

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Plaintiff-Intervenors are four Asian American registered voters in New York State who reside in neighborhoods with large Asian American populations in the boroughs of Queens and Brooklyn, in the City of New York. The current congressional district configuration dilutes Asian American voting strength. Plaintiff-Intervenors seek congressional redistricting that does not violate the “one person, one vote” principle under Article I, Section 2 of the Constitution of the United States and the federal Voting Rights Act of 1965. They desire to have their vote weighted equally with those of all other citizens of the City and State of New York.

The proposed Plaintiff-Intervenors also seek to ensure that this redistricting process results in congressional districts that keep the Asian American communities of common interest in which they reside whole and together, to ensure that their voting power is not diluted.

Co-Counsel for the Plaintiff-Intervenors, the Asian American Legal Defense and Education Fund (AALDEF) is a 38-year old nonpartisan, New York-based organization that protects and promotes the civil rights of Asian Americans through litigation, legal advocacy and community education. AALDEF has a long history in defending the voting rights and political representation of Asian Americans.

Plaintiff Intervenors seek to keep Asian American communities of interest together as new boundaries for congressional district are drawn. Keeping communities together will ensure that Asian Americans will have a full and fair opportunity to elect candidates of their choice, in accordance with the Voting Rights Act of 1965. 42 U.S.C. § 1973(b).

Standard of Review

In the Court’s Order referring the task of preparing a congressional redistricting plan to Your Honor, it directed, *inter alia*, that “Districts shall . . . preserve communities of interest” and

“shall comply with 42 U.S.C. §1973(b) and with all other applicable provisions of the Voting Rights Act.” (Dkt. 133 at 3). This language comports with the U.S. Supreme Court’s directive that under Section 2 of the Voting Rights Act, voting districts should encompass minority “communities of interest.” *League of Latin American Citizens v. Perry*, 548 U.S. 399, 433 (2006). Indeed, courts have long recognized that “[t]he equal protection clause of the fourteenth amendment guarantees the opportunity for equal participation by all voters, and redistricting plans that do not achieve fair and effective representation for all citizens impair the basic and fundamental rights secured by this amendment.” *Puerto Rican Legal Defense and Educ. Fund, Inc. v. Gant*, 796 F.Supp. 681, 687 (E.D.N.Y.1992) (“PRLDEF”) (citing *Reynolds v.. Sims*, 377 U.S. 533, 566 (1964)).

Background

We urge this Court to take account of Asian American communities of interest in Queens, Brooklyn and Manhattan to ensure that certain heavily Asian American neighborhoods, many of which have grown substantially over the last decade, are kept together within newly-drawn districts. As described below, we have attached the following: Asian American Neighborhood Maps (Attachment A); the Asian American Communities of Interest Survey (Attachment B); Proposed Congressional District 5 (Attachment C); Proposed Congressional District 12 (Attachment D); and a file of the racial breakdown of each proposed district (Attachment E). In addition, Plaintiff-Intervenors have filed a copy of the Unity Map.

I. Asian American Neighborhood Maps (Attachment A)

To assist in this process, we have attached copies of two documents. The first, *Asian American Neighborhood Maps*, was submitted to the Legislative Task Force On Demographic Research and Reapportionment (LATFOR) at the public hearing in Queens on September 7,

2011 by AALDEF staff attorney Jerry Vattamala. It includes detailed maps of 15 Asian American neighborhoods in New York City, as defined by community groups and residents who live and work in those geographic areas. They include:

Queens:

- Flushing
- Bayside
- Elmhurst
- Jackson Heights
- Woodside
- Floral Park-Queens Village-Bellerose-Glen Oaks
- Richmond Hill-South Ozone Park
- Ozone Park
- Briarwood
- Jamaica Hills

Brooklyn:

- Sunset Park
- Bensonhurst
- Sheepshead Bay
- Kensington

Manhattan:

- Chinatown-Lower East Side

For each of these maps, we indicated the total population of these community-defined neighborhoods and their racial/ethnic breakdown.

II. Asian American Communities of Interest Survey (Attachment B)

At the Manhattan public hearing on September 21, 2011, Margaret Fung, executive director of AALDEF, submitted to LATFOR the *Asian American Communities of Interest Survey*.¹ AALDEF met with community groups and residents throughout New York City,²

¹ AALDEF prepared a similar communities of interest study after the 2000 Census. AALDEF Community Survey Project, "Asian Neighborhoods in New York City: Locating Boundaries and Common Interests", Professor Tarry Hum, Ph.D., Department of Urban Studies, Queens College/City University of New York, 2002. See aaldef.org/docs/Asian-Neighborhoods-in-NYC%282002%29.pdf.

² AALDEF met with the following community groups to determine neighborhood boundaries and communities of interest: Adhikaar; Alliance of South Asian American Labor (ASAAL); Chhaya CDC; Chinese American Voters'

especially in neighborhoods experiencing the fastest Asian American population growth. They were asked to draw their neighborhood's street boundaries on a map and describe the most common concerns and issues in their neighborhoods. Among the top concerns cited by the groups we surveyed were the need for Asian language assistance, immigrants' rights, social services, health care, education, affordable housing, and workers' rights. Finally, we asked the groups to identify the surrounding neighborhoods that were most similar to and most different from their neighborhood.

For each of these fifteen neighborhoods, our survey describes how Asian American communities are currently divided between two or more Assembly districts, Senate districts, and Congressional districts. The survey summarizes the socioeconomic, language, and cultural characteristics of these Asian American neighborhoods and describes the services and common issues shared by local residents. Our survey identified areas in Queens, Manhattan, and Brooklyn where Asian Americans share common interests. We urge Your Honor to keep the identified communities of interest whole as district boundaries are redrawn.

III. Unity Map

On December 21, 2011 AALDEF, along with Latino Justice/PRLDEF, Center for Law and Social Justice at Medgar Evers College (CLSJ) and National Institute for Latino Policy (NILP) submitted a congressional plan for New York City to LATFOR, called the Unity Map. The Unity Map was submitted to LATFOR with the expectation that the suggested districts would be considered by LATFOR in the redistricting process. The Unity Map is now being

Association (CAVA); Chinese Christian Herald Crusades, Inc.; Chinatown Partnership; Chinese Progressive Association (CPA); Chinese Staff and Workers' Association (CSWA); Korean American Voters' Council (KAVC); MinKwon Center for Community Action; National Mobilization Against Sweatshops (NMASS); South Asian Youth Action! (SAYA!); Taking Our Seat; and United Chinese Association of Brooklyn (UCA).

submitted to this Court for consideration in its redistricting process, focusing on proposed Congressional Districts 12 and 5.

Our community survey project, nonpartisan exit polls of Asian American voters, review of census data, personal knowledge of the Asian American community in New York City, and work with community-based organizations and community leaders are the basis from which we developed proposed Congressional Districts 5 and 12.

IV. History of Asian American Voter Disenfranchisement in New York

Asian Americans have been historically disenfranchised in the redrawing of district boundaries and in their right to vote. *Cf. S. Rep. No. 94-295*, 94th Cong., 1st Sess. 28-30 & n. 21 (1975) (noting that “[d]iscrimination against Asian Americans is a well known and sordid part of our history.”); 42 U.S.C. §§ 1973b(f), 1973l(c)(3) (extending the Voting Rights Act to cover “language minorities,” including “persons who are . . . Asian American.”). AALDEF has a long history in defending the voting rights and political representation of Asian Americans.

In the past, redistricting plans have diluted Asian American voting strength by fragmenting communities into multiple districts. See U.S. Comm. on Civil Rights, *Civil Rights Issues Facing Asian Americans in the 1990s*, 159-161 (1992). Past and current congressional district boundaries in Queens have divided Asian American communities.

Between 1997 and 2002, Flushing was divided among congressional districts (“CD”) 5, 7, and 18. CD 5 included Bayside and the eastern portion of Flushing. CD 7 included part of Elmhurst and the western portion of Flushing. CD 18 came down from Westchester and included a strait in Flushing between CDs 5 and 7. The areas with the greatest Asian concentrations in Elmhurst were, likewise, divided among CDs 7, 9, and 18. While the western part of Elmhurst was in DC 7, the eastern part was in CD 9. A smaller area of Asians in the far

eastern part of Elmhurst was in CD 18. The Asian American vote in Flushing/Bayside and Elmhurst are each diluted among three congressional districts.

Even after the redistricting of 2002, these communities remain divided among different congressional districts. Flushing/Bayside is currently divided between CD9 and CD5, and Elmhurst is divided among CDs 5, 7, 9 and 12.

In light of this history, every effort should be made to not divide the Asian American communities and avoid the mistakes of the past in this current round of congressional redistricting.

Discussion

Asian Americans are the fastest growing racial minority group in New York City. The Asian American population in New York City has increased 32% over the past decade and now constitutes almost 13% of the city's population, numbering 1,028,119.³ Seven out of ten Asian New Yorkers reside in three boroughs: Queens, Brooklyn and Manhattan.

CENSUS 2010	Total Population	Asian Population	Asian Percent of Total	Total Growth Since 2000	Asian Growth Since 2000
New York State	19,378,102	1,406,194	7.3%	2.1%	35.7%
New York City	8,175,133	1,028,119	12.6%	2.1%	31.8%
- Queens	2,230,722	508,334	22.8%	0.1 %	30.6%
- Manhattan	1,585,873	177,624	11.2%	3.2%	24.0%
- Brooklyn	2,504,700	260,129	10.4%	1.6%	41.2%

* Only includes those who checked "Asian" and no other race.⁴

³ U.S. Census Bureau, 2010 and 2000 Census.

⁴ The "Not Hispanic Asian alone" number should be taken as the minimum number of Asian Americans. In the 2000 and 2010 censuses, respondents were allowed to mark more than one race, resulting in the category "alone or in combination," which includes people who reported a single race alone (e.g., Asian) and people who reported that race in combination with one or more of the other race groups (i.e., White, Black or African American, American Indian and Alaska Native, Native Hawaiian and Other Pacific Islander, and Some Other Race). In addition, race and ethnicity are considered separate and distinct identities, with a separate question on Hispanic or Latino origin. This means that all respondents are also categorized as "Hispanic or Latino" and "Not Hispanic or Latino." A more accurate and inclusive estimate of Asian Americans would be to aggregate both the Hispanic and Not Hispanic Asian

Asian American populations have increased faster than the overall growth rate of the boroughs in which they reside. In Queens, the Asian American population has grown over 300 times faster than the overall rate of the borough, over 25 times faster than Brooklyn's growth, and over 7 times faster than Manhattan's growth. New York has the largest Asian American population of any municipality in the nation. Yet, no Asian American has ever been elected in New York to the U.S. Congress.

In the neighborhood areas reviewed in our survey, AALDEF found that Asian Americans shared many tangible interests and concerns. Furthermore, residents also had consensus on the areas' boundaries. These communities of interest should not be divided when political districts are redrawn. Additionally, community members identified other areas and neighborhoods that were either similar to or different from their own neighborhoods. These findings should inform redistricting decisions about which areas to include within congressional districts, since such districts typically encompass multiple neighborhoods.

I. Proposed Congressional District 5

A. Flushing/Bayside, Queens, Constitutes a Single “Community of Interest”

Flushing is the Chinatown of Queens and is the cultural, economic and social hub of the Asian American community in Queens. Elmhurst also shares many common interests with Flushing. Asian immigrants first settle in either Elmhurst or Flushing and have many shared concerns, such as the need for Asian language assistance, immigrants' rights, social services, health care, education, affordable housing, and workers' rights.

alone or in combination populations. Accordingly, the total Asian American population citywide is actually 1,134,919, or 13.9% of the total New York City population.

As Asian Americans in Elmhurst and Flushing become more established, they migrate eastward towards Bayside, Little Neck, Douglaston and Great Neck, moving along Northern Boulevard. See Attachment B (“Community Survey”) at 4-6. The Asian American community has settled along this road and maintains a local link to Flushing, the cultural heart of the community. Using this local road, Asian Americans return to Flushing for religious purposes, shopping, ethnic restaurants and culture. Moreover, many residents work in Flushing but live in Bayside. *Id.* Despite sharing many common cultural characteristics, however, Flushing and Bayside are currently divided between CD9 and CD5.

Asian Americans in Flushing are politically cohesive, especially between the two largest Asian ethnic groups. During the November 2001 City Council elections, 94% of Chinese voters and 90% of Korean voters voted for John Liu. See Jennifer Lee, *Poll Finds Asian Overwhelmingly Back Liu*, N.Y. Times City Room (blog) (Sept. 18, 2009), available at <http://cityroom.blogs.nytimes.com/2009/09/18/poll-finds-asians-overwhelmingly-backed-liu/>.

B. Queens Village/Bellerose/Floral Park/Glen Oaks, Queens, Constitutes a Single “Community of Interest”

This community-defined area is currently divided between CD5 and CD6. Most of the Asian Americans in this community are South Asian and are homeowners. They are opposed to down-zoning and want to be able to rebuild and renovate their homes to a larger size. Many of the women work in health care, mainly as nurses. Residents moved to these neighborhoods in part because of the proximity to local hospitals, including Long Island Jewish Hospital, North Shore University Hospital, Winthrop Hospital, and Parker Jewish Nursing Home. Community Survey at 9.

Residents rely on public transportation, including the F train subway line and Express Bus service, many of which run along Union Turnpike. *Id.* The neighborhoods of Bellerose, Floral Park, Queens Village, and Glen Oaks share many common interests and should be considered as one community that should not be divided.

C. Briarwood/Jamaica Hills, Queens, Constitutes a Single “Community of Interest”

This community-defined area is currently divided between CD9 and CD6.

Briarwood/Jamaica Hills is home to a large Bangladeshi population. Most residents are owners of either single family or multi-family homes. Most of the population are immigrants who rely on public transportation, primarily the F train subway lines, along the Briarwood, Sutphin Boulevard, Van Wyck Expressway and Parsons Boulevard subway stops. Many residents do their shopping along Hillside Avenue at ethnic stores. Many of the residents are in favor of the rezoning of Hillside Avenue from six story buildings to fifteen story buildings. See Community Survey at 11.

D. Because of Shared Interests Among Residents in the Queens Communities of Flushing/Bayside, Queens Village/Bellerose/Floral Park/Glen Oaks and Briarwood/Jamaica Hills, All of These Neighborhoods Should Be Kept in the Same Congressional District

Residents of Flushing/Bayside, Queens Village/Bellerose/Floral Park/Glen Oaks and Briarwood/Jamaica Hills share many similar concerns and socio-demographic and political characteristics. Residents have similar needs, including: language access; difficulty applying for and receiving benefits or government assistance that they are entitled to; priority on education for their children; naturalization and immigration issues; shared opposition to down-zoning legislation; and, at some legislative levels, shared elected officials. See Community Survey at 9.

Indeed, proposed LATFOR Senate District 11 groups most of these neighborhoods together into one district, as does proposed LATFOR Assembly District 24, to a lesser extent.

Residents of Flushing/Bayside, Queens Village/Bellerose/Floral Park/Glen Oaks and Briarwood/Jamaica Hills share a number of demographic and political characteristics and perceived their neighborhoods as similar. Each neighborhood should be kept whole, and all should be kept together in the same congressional district. Therefore, Plaintiff-Intervenors respectfully urge Your Honor to adopt Plaintiff-Intervenors' proposed 5th Congressional District.

II. Proposed Congressional District 12

A. Chinatown/Lower East Side, Manhattan, Constitutes a Single “Community of Interest”

The community-defined area of Chinatown/Lower East Side is currently divided between CD12 (with Sunset Park), CD14 and CD8. Chinatown/Lower East Side is one of the last affordable immigrant neighborhoods in Manhattan. 34 % of Asians in Chinatown/Lower East Side live below the poverty level, and 74% are foreign born. The percentage of Asians in Chinatown/Lower East Side is 40%, and 73% of the Chinese-speaking population in this neighborhood is limited English proficient. Chinatown/Lower East Side is comprised of a significant Latino and Chinese population – which includes Cantonese, Mandarin, and Fujianese speakers. Many of the newer Chinese Fujianese immigrants live along East Broadway and farther east, stretching out much farther than what some consider the historic core of Chinatown, centered at Canal and Mott Streets . See Community Survey at 14-16.

Chinatown/Lower East Side is one of the few Asian neighborhoods in which a significant amount of public housing exists, which is reflected in the higher percentage of applications to and general knowledge about public housing among Chinatown/Lower East Side residents as

compared to people surveyed in the other neighborhoods. Because of this affordable housing stock in addition to the rent regulated units, Chinatown/Lower East Side has remained a largely working class community. See Community Survey at 15. Both neighborhoods have a shared immigrant history, which is reflected in the stores and resources that support the neighborhoods' economy. Residents, small businesses, and property owners in both neighborhoods have similar concerns about the development that is encroaching in the area. *Id.* at 15-16.

B. Sunset Park, Brooklyn, Constitutes an Asian American “Community of Interest”

The community-defined area of Sunset Park, Brooklyn, is currently divided between CD12 and CD8. 30% of Asians in Sunset Park live below the poverty level, and 75% are foreign born. The neighborhood's Chinese population is 39,952,⁵ and 81% of the Chinese-speaking population in this neighborhood is limited English proficient. A significant Chinese population of both Cantonese and Mandarin speakers live in Sunset Park, often considered Brooklyn's Chinatown. See Community Survey at 12. Sunset Park's Eighth Avenue serves as a main commercial corridor for Chinese Americans in the neighborhood and many surrounding areas in Brooklyn, including Bensonhurst. Many Chinese Americans live in Sunset Park, but continue to work in Manhattan's Chinatown after being priced out of its rental market. Ironically, city rezoning plans have also pushed more development into Sunset Park, making this neighborhood increasingly less affordable in recent years. Chinese and Latino residents are concerned about finding housing that is affordable for their families.

⁵ 2010 Census, Summary File 1.

C. Because of Shared Interests Among Residents in Chinatown and Sunset Park, Both Neighborhoods Should Be Kept in the Same Congressional District.

In *Diaz v. Silver*, 978 F.Supp. 96 (E.D.N.Y. 1997), *aff'd*, 522 U.S. 801 (1997), which involved New York's 1992 round of congressional districting, the Court noted extensive ties between the Sunset Park area in Brooklyn and the Chinatown neighborhood of Manhattan, two communities joined within the current 12th Congressional District. See *id.* at 101-102, 124. The Court took note of evidence that residents of both communities are tied together by "the same cultural background, economic conditions, service organizations, and media market" and "the Asian-American community votes similarly, originates from the same area and speaks the same dialect." *Id.* (citation omitted). The Court placed particular emphasis on the fact that "the record indicates that the Asian-Americans in the 12th CD are mostly of Chinese background," and, in light of this showing, "assume[d] that all Asian-Americans in the 12th CD have a community of interest" for summary judgment purposes. *Id.* at 124.

With respect to the 2002 round of congressional districting, the Special Master appointed by the Court, Frederick Lacey, sought to preserve "the cores of current districts and the communities of interest that have formed around them" in drawing congressional boundaries. See *Rodriguez v. Pataki*, No. 1:02-cv-00618-RMB-FM, Dkt. 37 ("Report and Plan") at 14 (May 13, 2002), *available at*

http://www.senate.mn/departments/scr/redist/redsum2000/New_York_Congress/planandreport.pdf. In light of the *Diaz* decision and the expert materials submitted in that case, see Report and Plan at 14, produced a map containing a District 12 that "maintains substantially the same demographic make-up as the current District 12 under the 2000 Census." *Id.* at 16. The expert affidavit in *Rodriguez*, submitted by Prof. Bernard Grofman, Prof. Nathaniel Persily and

Marshall Turner and noted by the Special Master in his Report and Plan, see *Rodriguez*, Dkt. 38, 2002 WL 32933930 (“Grofman Affidavit”), also referred to “the existence of strong communal ties between the Asian populations in Chinatown and Sunset Park. . . .” See Grofman Affidavit at ¶ 49.

In approving the Special Master’s Plan, the Court noted that “[t]he Lacey Plan safeguards the voting strength of minority populations protected under the Voting Rights Act,” noting specifically that it preserved District 12, “in which protected minorities combined currently constitute a majority of the voting age population . . . and elect minority candidates.” *Rodriguez*, 2002 WL 1058054 at *2 (S.D.N.Y. May 24, 2002). The Court also found that the Lacey plan “respects the redistricting principles of compactness, contiguity, pre-existing political subdivisions, and preservation of communities of interest.” *Id.* at *5.

Residents of both Chinatown and Sunset Park continue to not only share community resources and are interdependent, but they also share many similar concerns and socio-demographic and political characteristics. Residents of one neighborhood also continue to identify the other neighborhood as being similar to their own.

In the Community Survey, community groups of both neighborhoods identified concerns in employment, housing, immigrant issues, neighborhood quality, public safety, and transportation as key issues of concern. The majority of residents of Sunset Park said Chinatown was similar to their own neighborhood. Likewise, residents of Chinatown identified Sunset Park as similar. Residents of both neighborhoods said their neighborhoods were a mix of Asians and Latinos. According to Census 2010, the Asians in both neighborhoods are mostly Chinese. Because of the special relationship between Chinatown and Sunset Park and the demographic

and political similarities between residents of the two neighborhoods, Chinatown and Sunset Park should continue to be kept together in the same congressional district.

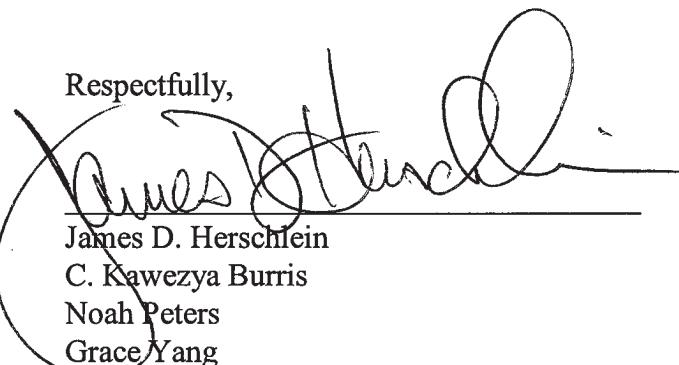
The newly drawn 12th Congressional District submitted by the authors of the Unity Map preserves the core areas of the current district, maintains the Latino and Asian populations, and includes all of Chinatown, Manhattan and Sunset Park, Brooklyn. The district will give the Asian American residents a fair opportunity to elect candidates of their choice. Therefore, Plaintiff-Intervenors respectfully urge Your Honor to adopt our proposed 12th Congressional District.

Conclusion

For the aforementioned reasons, Your Honor should draw congressional districts that keep Asian American communities together, thereby ensuring the meaningful representation of this historically disenfranchised and underrepresented community.

Dated: February 29, 2012

Respectfully,



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